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UNCLAS STATE 133521

SIPDIS
DHS FOR MIKE SCARDAVILLE

E.O. 12958: N/A
TAGS: [EAIR](#) [ASEC](#) [SZ](#)
SUBJECT: PNR AGREEMENT: DELIVERY OF PROPOSAL VIA
DIPLOMATIC NOTE

¶1. This message contains an action request. See paragraph 2.

¶2. Embassy is requested to deliver on a priority basis the text at paragraph 4 in the form of a diplomatic note to Federal Department of Foreign Affairs of the Swiss Confederation (DFA). The proposal conveyed in the note, on the transfer of passenger name record data from air carriers operating flights between Switzerland and the United States, anticipates a Swiss diplomatic note in response, which, if affirmative, constitutes an agreed understanding. Embassy is requested to report the delivery of the U.S. note and, when it arrives, the Swiss note in response.

¶3. Upon receipt of a Swiss reply note, Embassy is asked to pouch a certified copy of the Embassy's note and the original of the FDA's reply note to the Department's Office of Treaty Affairs (L/T - Room 5420, HST), to the attention of Jennifer Gergen.

¶4. Begin text:

The Embassy of the United States of America presents its compliments to the Federal Department of Foreign Affairs of the Swiss Confederation and, with reference to discussions between the Government of the United States of America (U.S. Government) and the Government of the Swiss Confederation (the Swiss Government) on the transfer of Passenger Name Record (PNR) data derived from flights between Switzerland and the United States, has the honor to propose the following:

On behalf of the U.S. government, the Embassy is pleased to inform the Swiss government that such PNR data are subject to the privacy protections for PNR data as set out in the System of Records Notice (SORN) for the Automated Targeting System (ATS) issued by the U.S Department of Homeland Security (DHS), U.S. Customs and Border Protection. A System of Records is a group of any records, under the control of any U.S. government agency, from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifier assigned to the individual. Under U.S. law, each such agency must publish notice of its Systems of Records in the Federal Register. The SORN for ATS was published in the United States Federal Register of August 6, 2007, (Volume 72, Number 150) (Pages 43650-43656).

PNR data derived from flights between Switzerland and the United States are governed by the rules regarding Passenger Name Record data that are set out in the SORN for ATS-Passenger (ATS-P), one of the six modules within ATS. The SORN covers the procedures for collecting, analyzing, storing, and providing access to such PNR information and redress as it applies to all passengers. This portion of the SORN addresses: the purpose of processing PNR; the routine uses of the system, including instances in which PNR data may be shared with other agencies or governments; the data elements that comprise PNR; the individuals covered by the system; the risk-based targeting of travelers based on PNR

data; the application of the administrative safeguards of the U.S. Privacy Act to records of individuals other than U.S. citizens or legal permanent residents that are contained in mixed systems; the length of retention and disposal of the PNR data; and an individual's opportunity for access to his or her PNR data and opportunities for redress.

The ATS SORN requires the U.S. government to confer upon PNR data derived from flights between the United States and Switzerland, and provided to the U.S. government pursuant to U.S. law, substantially the same privacy protections as those addressed in the Agreement between the United States of America and the European Union on the Processing and Transfer of Passenger Name Record (PNR) Data by Air Carriers to the United States Department of Homeland Security, signed at Washington and Brussels on July 23 and July 26, 2007 (the 2007 Agreement). The U.S. government assures the Government of Switzerland that it treats such PNR data derived from flights between the United States and Switzerland no differently than the treatment accorded to PNR data subject to the 2007 Agreement.

In light of the foregoing:

¶1. The U.S. government shall inform the Swiss government about any amendments to the ATS SORN that may affect the treatment of, and privacy protections applicable to, PNR data contained in ATS-P, or any amendments or successor agreements to the 2007 Agreement. If the Swiss government regards any such notification as incompatible with the Swiss Federal Act on Data Protection, there shall be consultations within sixty (60) days, as described in point 6 below.

¶2. With regard to the collection of such PNR data, DHS continues to prefer the transmission of PNR data by Swiss air carriers through a push system. Such a system should continue to be deployed, consistent with technical requirements issued by DHS. The transition to a push system, however, does not confer on airlines any discretion to decide when, how, or what data to push.

¶3. The U.S. government appreciates the ongoing support of the Government of Switzerland for this and other counter-terrorism measures. To support this endeavor, the U.S. government and the Swiss government shall periodically review the implementation of this agreed understanding and U.S. and Swiss PNR policies and practices for the purpose of contributing to the effective operation and privacy protection of our practices for processing PNR. The U.S. government shall seek reciprocally information about Swiss PNR systems as part of this periodic review, and representatives of the Swiss government maintaining PNR systems shall be invited to participate in the discussions. The head of the Swiss Federal Department of the Environment, Transport, Energy and Communications (DETEC) and the U.S. Secretary of Homeland Security, or other mutually acceptable officials, shall together determine the scope and modalities of the review.

¶4. The Swiss government confirms that the treatment to be provided by the U.S. government to PNR relating to flights between Switzerland and the United States in accordance with the information provided in this Note satisfies the requirements of the Swiss Federal Act on Data Protection regarding transfers to a foreign country.

¶5. The Swiss government shall continue to allow air carriers operating passenger flights between Switzerland and the United States to make PNR data available to the U.S. government in accordance with United States law and in application of this agreed understanding.

¶6. The two Governments shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this agreed understanding.

The Embassy further proposes, on behalf of the U.S. government, that, should this proposal be acceptable to the

Swiss government, this Note and the Ministry,s favorable Note in reply shall constitute an agreed understanding between the two Governments that shall take effect on the date of the Ministry,s Note and shall remain effective unless terminated by either Government with two (2) months, advance written notice to the other.

The Embassy of the United States of America avails itself of this opportunity to renew to the Federal Department of Foreign Affairs of the Swiss Confederation the assurances of its highest consideration.

In pursuance of a timely conclusion of the proposed understanding, the Embassy has the honor to propose the following text in reply.

(Courtoisie) and has the honor to acknowledge receipt of Embassy Note No. dated December , 2008, which reads as follows:

(Insert text of U.S. note)

The Ministry of Foreign Affairs of Switzerland has the honor to confirm that the proposal set forth in the Embassy,s Note is acceptable to the Government of the Swiss Confederation, and that the Embassy,s Note, together with this Note in response, shall constitute an agreed understanding between the two Governments that shall take effect on the date of this Note and shall remain in effect unless terminated by either Government with two months, advance written notice to the other.

(Courtoisie)
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